

FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

September 25, 2001

Elizabeth Festa
Bridge News
600 14th Street NW
Suite 700
Washington DC 20005

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Freedom of Information Act Control No. 21-267

Dear Ms. Festa:

This is in response to your Freedom of Information Act (FOIA) request received in the Commission's FOIA Office via the Internet on August 24, 2001. Pursuant to the FOIA, you request access to the following:

- 1) materials provided by Verizon Communications, Inc. (Verizon) that relate to voluntary payments triggered under the Bell Atlantic/GTE Carrier-to-Carrier Performance Plan including the total payment assessed before applying the caps for each performance measurement and for each state since June 2001;
- 2) the total offsets applied to the pre-cap payments, including competitive local exchange carrier (CLEC)-negotiated payments and payments made pursuant to state public utility commission performance assurance plans that have the effect of reducing the total payment to the United States Treasury under the *Bell Atlantic/GTE Merger Conditions*; and
- 3) materials that would allow Bridge News to determine how Verizon's performance improved and/or deteriorated in the various major performance categories as evaluated under the performance benchmarks since June 2001.

On September 13, 2001, you orally clarified that you sought only materials provided by Verizon to the Commission that address the voluntary payments made under the Carrier-to-Carrier Performance Plan, and not any information specifically related to individual competitive local exchange carriers (CLECs).

Pursuant to the *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd 14032 (2000), Verizon reports monthly performance data reflecting its quality of service to CLECs. Verizon is liable for voluntary payments to the United States Treasury if its performance fails to meet certain standards provided in the *Bell Atlantic/GTE Merger Order* for a specified period of time.

Our search has identified several documents responsive to your request. Specifically, Verizon filed with the Commission a spreadsheet detailing the actual payment made in August 2001 (i.e., the "August 2001 VZ Spreadsheet") and two spreadsheets providing examples for calculating the payment obligations due for two performance measurements (i.e., "VZ Payment Calculation Materials"). The August 2001 VZ Spreadsheet shows the amounts of Verizon's voluntary payments by state and by performance measurement category. In addition, the spreadsheet depicts the amounts Verizon paid under state performance assurance plans and individual interconnection agreements, and that Verizon deducted from its final voluntary payment to the U.S. Treasury. Thus, the August 2001 VZ Spreadsheet reports the gross payment amounts attributable to each Verizon state and performance measurement, as

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well as offsets for performance-related payments made for other reasons. The VZ Payment Calculation Materials provide related information for New Jersey and the District of Columbia.

Although Verizon submitted the documents in question to the Commission without a request for confidentiality pursuant to 47 C.F.R. § 0.459, it did label the August 2001 VZ Spreadsheet as "Confidential." The Bureau staff informed Verizon of your FOIA request and invited a response, but Verizon did not do so. A request for confidential treatment must include an explanation of the reasons for the request, as well as the facts upon which those reasons are based. 47 C.F.R. §§ 0.459 (a) and (b). The burden of proof rests with the submitting party to show by a preponderance of the evidence that nondisclosure is consistent with the provisions of the FOIA. 47 C.F.R. § 0.459(d).

We base confidentiality determinations under section 0.459 on Exemption 4 of the FOIA, 5 U.S.C. § 0.552(b)(4), which permits us to withhold "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Under Exemption 4 of the FOIA, commercial or financial materials are held to be confidential when disclosure would be likely, *inter alia*, to substantially harm the competitive position of the submitter. *National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) (*National Parks I*). It is the submitter's responsibility to show that it actually faces competition and explain the manner in which the subject data could be used by competitors to inflict substantial competitive harm. Without such information, the Commission cannot conduct a reasoned analysis as to whether materials submitted in confidence may, in fact, be properly withheld under Exemption 4.

In this instance, Verizon has offered no facts to support a claim of confidentiality. Moreover, Verizon has provided no information to show how its competitive posture would be harmed by the disclosure of the records in question and has provided no documentation upon which we may determine the likelihood of competitive harm resulting from release of the information at issue. Although Verizon did label one spreadsheet as "Confidential," this is a general statement that is insufficient for making an appropriate request under section 0.459(d) of our rules. We therefore lack any justification warranting a finding of confidentiality under Exemption 4 or our rules governing requests for confidentiality. As such, we must find that the materials are not subject to confidential treatment.

As a member of the news media, no search or review fees are assessed, and there is no charge for duplication of the first 100 pages of responsive material. 47 C.F.R. § 0.470(a)(2). Therefore, there are no fees associated with your FOIA request.

For the reasons set forth above, the request for confidential treatment by Verizon **IS DENIED** and the request for inspection of records **IS GRANTED**. Pursuant to Section 0.461(i)(1) of our rules, 47 C.F.R. § 0.461(i)(1), Verizon may file an application for review of the Bureau's decision to order release of its filing with the Office of General Counsel within 10 working days of the date of this letter.

Sincerely,

Joseph T. Hall
Assistant Bureau Chief, Management
Common Carrier Bureau

cc: Dee May, Verizon